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| IN THE COUNTY COURT OF VICTORIA | RevisedNot RestrictedSuitable for Publication |

AT MELBOURNE

CRIMINAL JURISDICTION

CR 17-02325

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
|  |  |
| v |  |
|  |  |
| JACK ASTON |  |

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| JUDGE: | HIS HONOUR JUDGE STUART |
| WHERE HELD: | Melbourne |
| DATE OF PLEA HEARING: | 13 December 2018 |
| DATE OF SENTENCE: | 17 December 2018 |
| CASE MAY BE CITED AS: | DPP v Aston |
| MEDIUM NEUTRAL CITATION: | [2018] VCC |

EX TEMPORE REASONS FOR SENTENCE

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Subject:

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

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| APPEARANCES: | Counsel | Solicitors |
| For the Director of Public Prosecutions | Mr R. Barry |  |
|  |  |  |
| For the Accused | Mr R. Edney |  |

HIS HONOUR:

1. Jack William Aston, on 23 October a jury of 12 unanimously found you guilty of six charges of negligently causing serious injury. The maximum penalty for that offence is 10 years' imprisonment.
2. On a sunny Monday morning at about 10.22 on the 22nd February 2016, a bus driven by you carrying 14 passengers collided with the Montague Street bridge in South Melbourne.
3. It is necessary to understand the gravity of a charge of negligently causing serious injury. The only issue between you and the prosecution was whether or not you failed in your duty of care to your passengers by not keeping a proper look out. As I directed the jury, a person acts with criminal negligence if his or her acts involved a great falling short of the standard of care a reasonable person would, not could, have exercised in the circumstances and his or her acts involved a high risk that death or serious injury would follow.
4. Before I turn to the facts surrounding this offending, it is appropriate to consider two decisions of the Court of Appeal. The first being *Phoenix Harrison & John Rigogiannis v The Queen* [2015] VSCA 349. In the joint judgment of Maxwell P, Redlich and Tate JJA, their Honours observed at paragraph 130:

 “It may very well be that some instances of NCSI by driving, in lower categories of seriousness, may appropriately be dealt with by the imposition of a CCO or a combination of a CCO with a term of imprisonment of up to two years. But the likelihood that a CCO alone or in a combination sentence will be appropriate necessarily diminishes as the degree of negligence and the seriousness of the injuries increase.  As the Court recognised in [*Boulton*](https://jade.io/article/363124), a point will be reached at which such sentencing options cease to be capable of satisfying the sentencing purposes of punishment, denunciation and deterrence.”

1. It was submitted by Mr Edney on your behalf that an appropriate sentence was a combined sentence of a community corrections order together with imprisonment where the maximum period of imprisonment is now one year. For the reasons which follow, I disagree.
2. Further, in another Court of Appeal decision of *Anthony John Walsh v The Queen* [2018] VSCA 334 in the joint judgment of Priest and Weinberg JJA at paragraph 28 and 29 their Honours observed:

 "As we have mentioned, the judge said that he considered each of the offences to be at least 'mid‑range' instances of negligently causing serious injury by driving, the offence involving Madelynne to be 'very close to being an upper‑end instance’. The judge cannot be criticised for attempting to so categorise the offences, since that was a course contemplated by *Harrison*. More recently, however, in *Weybuhy* ‑ decided in the post-*Dalgleish* era ‑ Maxwell P and Hargreave JA observed that:

  ... it is in our opinion not helpful to debate whether, on the spectrum of cases from least to most serious, the offending in this case falls within a particular category such as 'mid‑range' or 'bottom of the high‑range' or other like classifications. Such an approach carries the risk that it will attract reference to current sentencing practices for offences which have previously been categorised in a particular range, whatever the circumstances of the offending and the mitigating circumstances. Such an approach may lead to sentencing judges unconsciously limiting their instinctive synthesis of a particular case by sentences in other cases classified within a particular range, rather than considering the individual facts of comparable cases.

 In our opinion, it is best to avoid categorising cases as falling within a particular 'range' and, instead, for sentencing judges to have regard to relevantly comparable, and current, cases as 'yardsticks'. This approach involves considering where a case fits on the spectrum of offending, and is the preferable way for sentencing judges to have regard to current sentencing practices as a factor in the instinctive synthesis.

 And Priest JA said:

 Beyond saying that the maximum penalty must be reserved for cases in the 'worse category', and that a sentencing judge in every case is bound to consider where the facts of the particular offence and offender lie on the 'spectrum' that extends from the least serious instances of the offence to the worse category (properly so‑called), in my view, attempts to shoehorn particular cases into categories of seriousness such as 'upper', 'middle' or 'lower', or to characterise moral culpability as 'high' (or 'very high'), 'middle range' or 'low', are often calculated to obscure the essential nature of the sentencing task.

1. It is therefore for me to look to the circumstances of this offending in order to determine on that spectrum what the level of criminality is as part of the instinctive synthesis, and it is to that task I now turn.
2. At the time of this offending, you were aged 53 and you had been the driver of the Gold Bus Ballarat company since 2013. As will be revealed, you were a valued employee. What occurred on this day has been the subject of much debate, not only during the course of the trial, but during the course of the plea hearing last week. I have endeavoured to identify the reason or reasons why you were so inattentive to your duty. I have not been able to identify any particular reason or combination of reasons.
3. It is important to say that you had the responsibility to your 14 passengers to keep a proper look out at all times. During the course of driving down Montague Street on that morning, you did nothing of the sort. All you apparently did was drive with the flow of the traffic, observing nothing of the signage that was there for you to see and apparently not even making any observation of the Montague Street bridge itself.
4. Your passenger, Katherine Apostolidis saw the low bridge in front and the painted stripes on the bridge. The impact occurred shortly thereafter. She was seated in the fourth row behind you and felt pushed forward, then compressed backwards. She was trapped. She was extracted from the wreckage and she was transported to the Alfred Hospital where she remained for five days. Her injuries included closed head injury with amnesia, multiple thoracic spine fractures, facial laceration, glass particles to her face, elbow laceration and knee abrasions. That is the subject of Charge 1 on the indictment.
5. Your second passenger was Sumeet Arora. She observed that the traffic was medium and there were not too many cars on the road. She stated that when she looked up from her phone she “… saw a bridge and realised that the driver was going to go into it. I ducked and by the time I ducked there was the collision". She was seated behind you in either the fifth or sixth row. She was transported to the Alfred Hospital emergency and trauma centre. She suffered multiple spinal fractures and scalp injuries. That is the subject of Charge 2.
6. Brian Pretorius was also trapped within the wreckage. He was transported to the Royal Melbourne Hospital by ambulance. He suffered a left collar bone fracture, left rib fractures, right skull fracture and back fractures. That is the subject of Charge 3.
7. The fourth passenger was Sharon Raysin. She had flown in from the United States for a conference a few days earlier. She was seated in the fourth or fifth row. As a result of the impact, she was trapped in her seat and was later transported to the Emergency Department of the Royal Melbourne Hospital where she underwent CT scans of her head, neck, back, chest and abdomen and pelvis. X‑rays were obtained of her left wrist and left ankle. Her injuries included a fracture in the middle of her back, a laceration next to her left eye which was stitched together in the Emergency Department, multiple fractures of her left ankle and a small amount of air between her chest and her lung. Charge 4 relates to her.
8. Harry Whelan was seated two rows behind you. He was transported to the Emergency Department at St Vincent's Hospital. His injuries included clavicular fracture, multiple grazes and tenderness of the right shoulder and shoulder blade, a four-centimetre laceration across the lower right ear through cartilage, a three-centimetre laceration across the chin, a laceration across the neck, a loose tooth and pain on talking and swallowing. Charge 5 relates to him.
9. Charge 6 relates to Beverley Williamson who was the host of the tour. It was her job to get the passengers on your bus and show them around various scheduled venues in the St Kilda area. You told her that you were not sure of the area, and not sure how to get to the venues, although you did not ask her for directions. She was focussed on other matters whilst on the bus but noticed the bridge just before impact and thought it was very low. She was transported to the Alfred Hospital with a closed head injury, facial bone fractures, a scalp laceration cervical, neck fractures and skin abrasions to the upper back. She underwent various treatments for her injuries, including surgical fixation of her fractured facial features.
10. A fulsome description of their injuries is set out in Exhibit 15 - Admissions of Fact and at pages 375-392 of the depositions.
11. Three of your passengers saw the bridge immediately prior to the collision being Katherine Apostolidis, Sumeet Arora and Beverley Williamson. Ms Williamson’s evidence at trial includes the following at p.132 of the transcript:

 Question from Mr Barry, "Well, after you'd spoken on the microphone at the passengers and made the phone call did you have any further discussion with the driver?" Answer: "I don't believe so." Question: "After making the phone call what did you do?" Answer: "I was just reading my paperwork for that morning to make sure I knew where we were going and in what order, and so forth." Question: "Yes. And what's the next thing that you recall?" Answer: "Ah, I remember looking up and were very close to the bridge, and somebody may have shouted, 'we're going to hit it'. It's a bit sketchy, but I remember looking up just before impact." Question: "How long before impact; can you recall?" Answer: "Ah it was immediately. It was literally head up and... that’s as far as I can remember." Question: "As to the speed of the bus at this point in time, was there anything out of the ordinary about that?" Answer: "No." Question: "This comment about, 'we may hit the bus' or - do you know where that came from?" Answer: "No, I don't".

1. Two drivers following you also saw the danger and tried to warn you but to no avail. Your passengers were some three steps higher than you were. Three of them, as I have said, saw the bridge immediately before impact. How it is that you didn't is astonishing.
2. Exhibit 3 on the trial is a set of 22 photographs of the scene leading up to and of the bridge itself.
3. Your travel towards this bridge involves first you driving out of the West Gate Bridge labyrinth, where the road sweeps in a broad way to the left. Coming around that sweeping bend, the first two signs would have been clearly visible for you to read. Photos 2 and 19 show those two signs. The highest sign reads:

LOW BRIDE AHEAD

3.0m HEIGHT

1. Immediately below that, in white against a red background, the sign continues:

HIGH VEHICLES

DETOUR AHEAD

1. The second sign below reads:

3.0m BRIDGE

TRUCKS

DO NOT ENTER

MONTAGUE ST

1. What follows after the sweeping bend is a straight stretch of road leading directly to the Montague Street bridge. For all intents and purposes, it is a level road, though on the view, it seemed to me to have a slight decline as one approaches the bridge.
2. You continued down Montague Street to the first traffic-controlled intersection at Munro Street where your bus come to a stop and was stationary for about 10 seconds waiting for the lights to change. To your left on the nature strip was the third sign which is shown in photographs 3 and 20. The top part of that sign essentially repeats the previous sign and it read:

LOW BRIDGE AHEAD

3.0m HEIGHT

HIGH VEHICLES DETOUR

[with an arrow pointing to the right].

1. Again, the words “HIGH VEHICLE DETOUR” are in white on a red background.
2. After you moved from that intersection, you drove for a further 48 seconds or so before you collided with the bridge. At that point of collision, the bus was travelling at about 56 kilometres per hour. There was no endeavour to deviate from that course, there was no braking.
3. In that travel you past the fourth sign having crossed Normanby Road, again on this nature strip to your left. Photos 4 and 21 show that sign. Again, it is a sign which reads:

3.0m HEIGHT

LOW BRIDGE

29 And then on a red background:

HIGH VEHICLES

DETOUR

[with an arrow pointing to the right].

1. Closely followed from that fourth sign is a fifth sign which is depicted in photographs 4, and 22. That sign read:

 LOW

 CLEARANCE

 3.0m

31 By this stage, having crossed Normanby Road, a height sensor on the southern side of Normanby Road intersection was triggered resulting in two flashing red lights being activated on the bridge itself. In addition, as part of that signage, an illuminated “HEAVY VEHICLE” sign was alternating with a “DETOUR” sign illuminated with an arrow pointing to the right. Below this sixth electronic signal was the seventh sign which is seen in photographs 6, 7 and 8 which read in black on white background:

 LOW CLEARANCE

 3.0m

32 This active and static signage was directly in your line of sight. Indeed, that static sign was damaged as a result of the collision as seen in photographs, 10, 11 and 12.

1. Shortly prior to the bridge to your right was yet another eighth sign near the gutter which is seen in photographs 5A and 5B which read “LOW BRIDGE DETOUR” with an arrow pointing to the right. That was the last detour that you could have taken.

34 In addition on all this signage was the obvious physical presence of the bridge itself which had distinctive alternating red and white chevrons painted along the full width of the bridge, as shown in photographs 4, 5B, 6, 10 and 11.

1. Finally, the bottom part of the bridge below the chevron must have been visible to you, being if not at your eye level, then just above it.
2. Coming around the bend you passed the first two signs. From that signage you travelled 293 metres to the bridge. You then came to Munro Street stopping for about 10 seconds waiting for the lights to change. From that stationary position you then drive for a further 48 seconds before colliding with the bridge. You were on Montague Street for the period from coming around the bend to stopping at Munro Street, plus 10 seconds stationary at Munro Street and then a further 48 seconds of driving to the collision. Thus, your progress from the bend to the bridge was a relatively slow one, during which you saw no signage for in excess of 58 seconds.
3. Apart from the obvious height of your vehicle, which you were familiar with, on the driver’s instrument panel was a sign in capitals which read “VEHICLE HEIGHT 3.8 METS”. That sign is shown in photographs 13 and 18. In fact the height of your vehicle was 3.6 meters and so the warning height was, sensibly, slightly exaggerated.
4. A record of interview was conducted with you on 9 March 2016. In it reference is extensively made to the signage and the like. At questions 113 to 115 you were asked these questions:

 Question: "Now, so familiar - or how familiar are you with Melbourne, with the suburbs of Melbourne?" Answer: "Not very familiar." Question: "Sorry?" Answer: "Not very familiar." Question: "How often - how often would you come down to Melbourne?" Answer: "When I was driving the V/Line bus for 11 - 11 months it was every day. But it was a V/Line run. And with Gold Bus it could be four times a week but it would be V/Line - airport, oh, and you might go out the other side of Melbourne to pick up a school to bring it back up to Ballarat. So it could be, like, three to four times a week but I don't - not ‑ I'm still not very familiar with Melbourne".

1. Later, at questions 164 to 171 you were asked:

 Question: "Yeah. And at that time when you got to the bus you were feeling to to drive and - - -" Answer: "Oh, yeah." Question: "There was no ‑ ‑ ‑" Answer: "I was." Question: "There was no ‑ ‑ ‑" Answer: "No, I was very confused." Question: "Sorry?" Answer: "I was very confused." Question: "You were very confused, yeah. What were you confused about?" Answer: "”Cause I'm not familiar with that area, where to go." Question: "Yeah. Have you ‑ have you driven in that area before at all?" Answer: "Never." Question: "In the South Melbourne area, yeah?" Answer: "Never, never." Question: "Yeah" Answer: "I've never been to Albert Park before in my life".

1. Later at questions and answers 365 to 368 you were asked:

 Question: "Yeah, yeah. And what would you say about the traffic conditions at the time?" Answer: "It was busy." Question: "Yeah. Did anything either inside or outside the bus affect your vision at the time?" Answer: "Nuh. I know the visors were down but - - -" Question: "Just like a sun visor, is it?" Answer: "Yeah, they are". Question: "That's fixed to the bus?" Answer: "Yeah".

1. As to the signage itself, you were asked from questions 208 to 222 the following (with my emphasis in itallics):

 Question: "Yeah. So photo number 1, if you could just explain to me what you see in that photo." Answer: "It's got the sign saying, low bridge." Question: "Yeah. So just read to me what it says in the yellow and the red." Answer: "Low bridge ahead, 30 metres high - three metres high. High vehicles detour ahead." Question: "O.K." Answer: "Montague Street." Question: "Yeah. Do you remember seeing that sign at all?" Answer: *"I did not see that sign at all."* Question: "So that sign’s approximately 290 metres before the bridge. O.K? So that's the first sign." Answer: *"I did not see it."* Question: "O.K. So as you’ve come out of the Convention Centre you’ve turned left, you've gone underneath the CityLink overpasses. As you come around a sweeping bend to the left this sign is posted in the middle of the road. You didn't see that at all when you were driving past?" Answer: *"No, not at all."* Question: "Can you - photo number 2. Can you just read out what it says in the yellow and red on that one?" Answer: "Low bridge ahead, three metres high. High vehicle detour." Question: "So that one's about 150 metres before the bridge. You didn't see that sign?" Answer: *"No, I didn't see the sign at all."* Question: "Number 3. Can you explain - can you just read out to me what that sign says in the yellow and red?" Answer: "Low bridge ahead, three metre height. 10 foot, truck detour." Question: "So that one’s about 70 metres before the bridge. You didn't see that sign?" Answer: *"I can't recall seeing any of the signs."* Question: "Yeah. O.K. So photo number 4?" Answer: "Yeah, low bridge detour." Question: "Yeah. Did you see that sign?" Answer: *"I don't recall seeing any of them."* Question: "So as you go past the intersection of Montague and Normanby there's a sensor on the – on the traffic light pole that senses any vehicles over about two and a half metres, and that sets off some flashing lights and - and warning signs on the bridge. So this is photo 6. Can you just explain to me what it says in that photo, what can you see in that one?" Answer: "Detour, low clearance." Question: "Do you remember seeing that, approaching the bridge?" Answer: *"I don't recall seeing that at all*." Question: "Mm. And the seventh photo is similar to the sixth but this one says - so that sign alternates between ‘detour’ and ‘heavy vehicle’?" Answer: *"I don't recall seeing that sign".*

1. Various explanations were proffered during the course of the trial and the plea as to why you failed to heed those signs or even make proper observation of the bridge.
2. First it was said, you were unfamiliar with the road and the area. True enough, but any driver unfamiliar with a road would be expected to be ever more vigilant.
3. Second, it was put that this is an inherently dangerous bridge, well past its proper use date. Clearly that is so. This is a bridge which despite its width is very low, indeed the lowest in the metropolitan network, as I understand it. But that belies the fact that the bridge itself has the clear appearance of being a low bridge. It belies all the signage that I have referred to, that warns trucks, and in your case, buses not to pass under it or endeavour to do so.
4. Thirdly, it was suggested that the group was running late. How that impacts on your responsibilities eludes me.
5. Fourthly, it was suggested that in some way you were confused. I don't know how you could possibly have been confused. Once you had come around that sweeping bend the road was straight, the weather was fine, three of your passengers and two other drivers saw what you did not.
6. Finally, it was said that your employer had failed to warn you of the bridge in circumstances in particular where another driver of the same company collided with the Montague Street bridge in 2006. It is my clear view that it is your responsibility as driver to observe the road and all its hazards. Employers cannot be blamed for the obvious failures of employees to take the most basic of precautions. It is the duty of all drivers to keep a proper look out. Employee drivers do not need to be told the obvious.
7. The driving of any vehicle, let alone a truck or an 11 tonne bus, as here, is in itself a dangerous activity. Drivers cannot be distracted from or inattentive to the road, even for a brief moment. Drivers must adjust their driving according to the type of vehicle they are driving and the myriad changes that may present themselves, even in an otherwise straight forward journey. These observations may seem obvious, even trite, but this case demonstrates the duties every driver has and the terrible consequences where that duty is breached as you have done.
8. Driving an 11-tonne bus with 14 passengers and failing to observe any of the warnings, even the bridge itself is, in my view, a serious example of this offending. As I have said why it was you were so grossly inattentive to your obligations over such a long time is unknown to me. As a consequence of your criminal negligence, no less than six of your 14 passengers were seriously injured.
9. It is clear to me that general deterrence, that is deterring others, is the principal sentencing factor I must take into account in sentencing you. It must be made plain to all that a failure of the gravity of yours, will attract stern punishment.
10. At the time of this offending you were 53 years of age and you are now 55. You have two children, a daughter, 21 years of age, and a son 18‑years‑old. You have been married 25 years. As I will come to it, you have lived an exemplary life. You have been a good father and husband and so are a family man. You have served your community well in a myriad of ways, and you have an exemplary work ethic, working since the age of 17. You too, as a result of this collision, suffered a broken neck and were in a neck brace for some three months though happily that injury has resolved.
11. Testament to your excellent background have been some letters that I have carefully read. Your wife wrote one which became JA 7 on the plea. She writes, among other things:

"Jack is a very supportive father. He has always put his family first.

Friendships are important to Jack. He shares activities such as fishing with his mate and enjoys spending time with them. They are always ringing to say, 'let's go fishing, Jack'.

Jack was an active member of his local community. When our children were at primary and secondary school, Jack volunteered his time to help run sports days, camps fundraising markets, school vegetable garden and the Energy Breakthrough competition held in Maryborough. Whenever there is a local event, Jack helps out.

Jack always takes his job seriously. He has a strong work ethic, striving to do the best for his employer, colleagues, customers and others around him."

1. Donald McKenzie has written a letter and he gave impressive evidence before me on the plea. His letter became Exhibit JA 1. In it he writes:

"Jack was employed by Gold Bus Ballarat due to his solid work experience, qualifications and personal attributes in addition to a Heavy Vehicle Driver Licence, Jack's qualifications include a fork‑lift licence and Working with Children check.

In his time at Gold Bus, I found him to be extremely hardworking, energetic, helpful and honest and was very impressed by his driving. Jack met all his obligations and did so willingly no matter what the task, whether it was to do with another run to help a fellow driver out or sweeping the bus. Nothing was too big an ask of Jack. Jack is a type of person who would help anyone at any time.

Jack's willingness to go above and beyond expectations, made him very popular and widely liked by his colleagues and our customers. Customers often commented on Jack's cheery disposition and commitment to ensure that they enjoyed their trip. We never received a customer complaint about Jack, quite the opposite.”

1. It continues a little later:

"Over this period, I have also come to know Jack and his family, Wendy, Megan and Ben on a personal level. Jack is an honourable man with the highest level of integrity and a very caring dedicated and compassionate family man. Jack puts his family first, even before himself".

1. It concludes:

 "In my opinion, Jack Aston is a solid citizen who is well respected by the community, work colleagues and loved by his family".

56 I accept that opinion of course which makes this sentencing task all the more difficult.

57 Michael Murphy, the proprietor of Inland Motor Body Works also wrote a letter which became JA 8. In it he writes:

 "Jack and I first worked together at Learmonth Road Smash Repairs in 1994. I was an apprentice panel beater and Jack was one of the qualified tradesman to help with my training. As a mentor, Jack was patient and generous with his time and knowledge. Jack helped to instil in me the value of quality and pride in my work and the importance of safety in the workplace for both myself and others". Where it later continues: "We were excited when Jack accepted an offer to join the business in 2010 as both panel beater and our new safety officer. Jack has always been extremely conscientious regarding occupational health and safety issues. His diligence ensured that the workshop worked smoothly and safely. Jack was always on top of any maintenance or personal safety issue".

1. He continues a little later:

 "Having driven with Jack on numerous occasions, both on the bus and in cars over the years, I can only say what a cautious driver Jack has always been. I have never known him to speed or break any road laws, it's just not in his nature. The accident has devastated Jack for someone so careful and cautious the accident has been truly life changing for Jack and he's really struggled with his feelings of guilt and remorse".

59 I accept all of what has been written. Those passages perhaps do not do justice to how highly you are regarded.

60 In addition, you have no criminal history, and these are matters that you are entitled to have taken into account to your credit.

61 In relation to your personal background, I have read the psychological report of Jeff Pemberton which became JA5. In it, on the topic of concentration, he notes:

 "His ability to attend to information has been at times very limited in his ability to concentrate was observed to vary in sessions, depending on his level of discomfort. Concentration has improved following the commencement of anti-depressant medication. No disclosure or inference has been made in regard to any difficulties in concentration that may have existed prior to this accident occurring".

62 As to the topic of attitude to problems, illness and injury, Mr Pemberton continues:

 "He's often been very critical of self in regard to the circumstances leading up to this accident. As the driver of the bus he freely concedes partial responsibility for the events leading up to this incident but remains mindful of responsibility also owed to the safe passage of all road users going about their day‑to‑day business".

63 In the summary and assessment portion he continues:

 "As a consequence of the accident his satisfaction for life has become considerably diminished. He now lives with reduced circumstances that have severely impacted his health, lifestyle, family, work and future outlook on life. He has developed significant symptoms of anxiety and depression. His symptoms of anxiety include a heightened sense of danger, feeling on edge and overly aroused; getting easily startled, feeling ‘jumpy’, overly alert to danger – hyper-vigilance, sweating, tremor, chest pains and recent episode of shingles".

64 In the penultimate paragraph he writes:

 "In my opinion, his condition is that of post traumatic stress disorder. Post traumatic stress disorder is the onset of significant symptoms, in response to an identifiable stressful event in this case, his involvement in that action and that threatened death to self".

65 There is an addition the psychological report of Mr Cummins which became Exhibit JA 4. Mr Cummins in paragraph 29 noted:

 "At interview he presented as being severely distressed and distraught and I assessed him as being severely depressed and severely anxious".

66 In the opinion section Mr Cummins notes:

 "I read a transcript of Mr Aston’s record of interview. At interview he stated the only explanation he can offer for the collision was that he was overwhelmed and confused with what was required of him as a result of his plan for the day being abruptly changed on the morning in question. At interview he stated it was probably correct he should have been provided with appropriate guidance and training to drive a bus in the CBD as opposed to driving a bus in country areas or on freeways where the route that he was required to follow was reasonably well documented.

67 And finally, at paragraph 37 Mr Cummins states:

 "In my opinion he is rigorously remorseful and riddled with shame and embarrassment that he failed to see and respond to the various warning signs".

1. You elected to stand your trial, which was your right, and no part of this sentence in any way is to be taken against you in that regard. The only consequence is that you do not have the benefit of a sentencing discount for pleading guilty.
2. I am satisfied that you are genuinely remorseful and with some equivocation, accept responsibility for what occurred on that fateful day. In those circumstances, deterring you is of no moment in the sentencing exercise. I accept that your prospects of rehabilitation are excellent.
3. For the first time in your life find yourself incarcerated, separated from your loving wife and family, and I accept the submissions made by Mr Edney that imprisonment for you in those circumstances will be more burdensome because of your concerns for your wife, in particular, and therefore I intend to moderate the sentence. I achieve that by reducing the sentence that I would otherwise pass on Charge 1 which will be the base sentence.
4. Clearly a sentencing judge is assisted if there are comparable Court of Appeal cases that may provide “a yardstick” which would assist the sentencing exercise. In this case there are no such comparable cases. All of the cases that I and counsel are aware of involve circumstances where drivers have got into the vehicle, alcohol and/or drug affected or fatigued. These cases typically also involve serious breaches of the road rules such as by excessive speed, erratic driving and driving through red lights. They frequently also involve persons having relevant prior criminal history for just such offending.
5. In the end, as I have observed, general deterrence, that is deterring other drivers from being inattentive in serious breach of their duty of care to other road users and their passengers, is the principal sentencing factor I must take into account. Specific deterrence, as I have indicated, is of no moment in this case. But there is also a need for there be just punishment for this elongated inattention to your duty of care to your passengers. The sentences that I pass involve denunciation of the lengthy and deplorable inattention to your duty of care to keep a proper lookout. I have taken into account the need to pass sentences that in total are appropriate.
6. Stand up Mr Aston. On Charge 1, I sentence you to be imprisoned for a period of two years and nine months. This is the base sentence. On each of Charges 2 to 6 inclusive, I sentence you to be imprisoned for a period of three years.
7. I direct that six months of each of the sentences on Charges 2 to 6 be served cumulatively on the base sentence. That produces a total effective sentence of five years and three months. I direct that you be eligible for release on parole after having served a minimum period of two years and six months.
8. I declare that pre‑sentence detention is four days.
9. Are there any other matters that require my attention, Mr Barry, Mr Edney?
10. MR BARRY: Just that order in relation to the licence, Your Honour, the mandatory two years.
11. HIS HONOUR: I direct that his licences be cancelled for a period of three years.
12. MR BARRY: Thank you, Your Honour.
13. MR EDNEY: As Your Honour pleases.
14. HIS HONOUR: Yes, remove Mr Aston.

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